

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**JOHNNIE GARRETT, # N-20411,**

**Plaintiff,**

**vs.**

**ATTORNEY GENERAL of the STATE  
of ILLINOIS,  
and WARDEN of PINCKNEYVILLE,**

**Defendants.**

**Case No. 13-cv-1087-MJR**

**MEMORANDUM AND ORDER**

**REAGAN, District Judge:**

On December 2, 2013, this Court dismissed Plaintiff's complaint for failure to state a claim upon which relief may be granted (Doc. 8). Plaintiff was ordered to submit an amended complaint no later than January 6, 2014, if he wished to further pursue his claims. He was also warned that if he failed to timely submit an amended complaint, this action would be dismissed with prejudice, and the dismissal would count as a "strike" under 28 U.S.C. § 1915(g).

Plaintiff's deadline has now passed, and he has not submitted any amended pleading.

**IT IS THEREFORE ORDERED** that this case is **DISMISSED with prejudice** for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. 1915A(b)(1). Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$350.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467-68 (7th Cir. 1998); *Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997).

This dismissal shall count as a strike pursuant to 28 U.S.C. § 1915(g).

If Plaintiff wishes to appeal the dismissal of this case, he may file a notice of appeal with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A motion for leave to appeal *in forma pauperis* should set forth the issues Plaintiff plans to present on appeal. See FED. R. APP. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the appeal. See FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur another “strike.” A timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4).

**IT IS SO ORDERED.**

**DATED: January 21, 2014**

s/ MICHAEL J. REAGAN  
United States District Judge